

APPEAL NO. 172074
FILED OCTOBER 26, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 17, 2017, with the record closing on August 7, 2017, in (city), Texas, with (administrative law judge) presiding as administrative law judge (ALJ).¹ The ALJ resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on March 4, 2016, with an impairment rating (IR) of four percent.

The claimant appealed, requesting that the CCH be reconvened to permit him to present evidence concerning the disputed issues of MMI and IR and contending that he had good cause for failing to attend the CCH on July 17, 2017, and to respond to the ALJ's 10-day letter dated July 20, 2017, because he was incarcerated. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and remanded.

The evidence reflects that the claimant sustained a compensable right knee injury on (date of injury) which required surgical reconstruction of the anterior cruciate ligament and repair of the medial collateral ligament. The carrier stipulated that the claimant sustained a compensable injury in the form of a right knee contusion and tear. On July 17, 2017, a CCH was called to order to hear the disputed issues. The carrier was present; however, the claimant failed to appear and the claimant's ombudsman announced on the record that she had received no communication from the claimant concerning his appearance at the CCH.

Due to the claimant's nonattendance at the CCH, the ALJ caused a 10-day letter dated July 20, 2017, to be sent to the claimant. The ALJ closed the record on August 7, 2017, and issued a decision that was unfavorable to the claimant on both of the issues and which indicated that the claimant had failed to respond to the 10-day letter.

In Appeals Panel Decision (APD) 042634, decided November 29, 2004, the Appeals Panel noted that the purpose of the 10-day letter process is to give the non-

¹ Section 410.152 was amended in House Bill 2111 of the 85th Leg., R.S. (2017), effective September 1, 2017, changing the title of hearing officer to ALJ.

appearing party the opportunity to meaningfully participate in the dispute resolution process. In APD 020273, decided March 29, 2002, the claimant made a number of factual allegations in her appeal regarding good cause for failing to attend the CCH and her attempts to respond to the 10-day letter, and the Appeals Panel stated that it was not in a position to evaluate the credibility of the claimant in regard to those matters and for such reason, remanded the case to the ALJ to take evidence concerning the claimant's allegations and to permit the claimant to present evidence on the merits of her claim at the CCH on remand.

In this case, the claimant makes factual allegations that, if true, could constitute a basis for good cause for the claimant's failure to attend the CCH on July 17, 2017. As in APD 020273, *supra*, the case is remanded to the ALJ to take evidence concerning the claimant's allegations and to permit the parties to present evidence on the merits of the claim at the CCH on remand.

We accordingly reverse the ALJ's determinations that the claimant reached MMI on March 4, 2016; and that the claimant's IR is four percent and we remand this case to the ALJ to allow the claimant an opportunity to participate in the dispute resolution process, and present evidence if he wishes to do so on the issues.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge